

A bill for an act  
relating to family law; enacting the Family Reunification Act of 2009; changing  
certain child placement procedures; amending Minnesota Statutes 2008, sections  
260C.201, subdivision 11; 260C.328; proposing coding for new law in Minnesota  
Statutes, chapter 260C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CITATION.**

Sections 2 to 4 may be cited as the "Family Reunification Act of 2009."

Sec. 2. Minnesota Statutes 2008, section 260C.201, subdivision 11, is amended to read:

Subd. 11. **Review of court-ordered placements; permanent placement  
determination.** (a) This subdivision and subdivision 11a do not apply in cases where  
the child is in placement due solely to the child's developmental disability or emotional  
disturbance, where legal custody has not been transferred to the responsible social services  
agency, and where the court finds compelling reasons under section 260C.007, subdivision  
8, to continue the child in foster care past the time periods specified in this subdivision.  
Foster care placements of children due solely to their disability are governed by section  
260C.141, subdivision 2a. In all other cases where the child is in foster care or in the care  
of a noncustodial parent under subdivision 1, the court shall commence proceedings  
to determine the permanent status of a child not later than 12 months after the child is  
placed in foster care or in the care of a noncustodial parent. At the admit-deny hearing  
commencing such proceedings, the court shall determine whether there is a prima facie  
basis for finding that the agency made reasonable efforts, or in the case of an Indian  
child active efforts, required under section 260.012 and proceed according to the rules of  
juvenile court.

For purposes of this subdivision, the date of the child's placement in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed in foster care by the child's parent or guardian. For purposes of this subdivision, time spent by a child under the protective supervision of the responsible social services agency in the home of a noncustodial parent pursuant to an order under subdivision 1 counts towards the requirement of a permanency hearing under this subdivision or subdivision 11a. Time spent on a trial home visit counts towards the requirement of a permanency hearing under this subdivision and a permanency review for a child under eight years of age under subdivision 11a.

For purposes of this subdivision, 12 months is calculated as follows:

(1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a child is placed in foster care or in the home of a noncustodial parent are cumulated;

(2) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed in foster care within the previous five years are cumulated. If a child under this clause has been in foster care for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.

(b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to the admit-deny hearing required under paragraph (a) and the rules of juvenile court, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child, including a termination of parental rights petition, according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152.

(c) The permanency proceedings shall be conducted in a timely fashion including that any trial required under section 260C.163 shall be commenced within 60 days of the admit-deny hearing required under paragraph (a). At the conclusion of the permanency proceedings, the court shall:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) order a permanent placement or termination of parental rights if permanent placement or termination of parental rights is in the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated. Transfer

of permanent legal and physical custody, termination of parental rights, suspension of parental rights with an award of guardianship and legal and physical custody to a relative, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.

(d) If the child is not returned to the home, the court must order one of the following dispositions:

(1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

(i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;

(ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260, and the procedures set out in the juvenile court rules;

(iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; and

(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights when the requirements of sections 260C.301 to 260C.328 are met or according to the following conditions:

(i) order the social services agency to file a petition for termination of parental rights in which case all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it approves the responsible social service agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, nor suspension of parental rights with an award of guardianship and legal and physical custody to a relative, is in the child's best interests;

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and the responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or with a fit and willing relative who will agree to a transfer of permanent legal and physical custody of the child, but such efforts have not proven successful; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home; and

(iii) at least annually, the responsible social services agency reconsiders its provision of services to the child and the child's placement in long-term foster care to ensure that:

(A) long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability, including whether there is another permanent placement option under this chapter that would better serve the child's needs and best interests;

(B) whenever possible, there is an identified long-term foster care family that is committed to being the foster family for the child as long as the child is a minor or under the jurisdiction of the court;

(C) the child is receiving appropriate services or assistance to maintain or build connections with the child's family and community;

(D) the child's physical and mental health needs are being appropriately provided for; and

(E) the child's educational needs are being met;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; ~~or~~

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home agreed to by the responsible social services agency having legal custody of the child pursuant to court order under this section that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24, except that such consent executed by a parent under this item, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable unless fraud is established and an order issues permitting revocation as stated in item (vii);

(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;

(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner;

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent;

(vi) notwithstanding item (v), the commissioner of human services or the commissioner's designee must pursue adoptive placement in another home as soon as the commissioner or commissioner's designee determines that finalization of the adoption with the identified prospective adoptive parent is not possible, that the identified prospective adoptive parent is not willing to adopt the child, that the identified prospective adoptive parent is not cooperative in completing the steps necessary to finalize the adoption, or upon the commissioner's determination to withhold consent to the adoption;

(vii) unless otherwise required by the Indian Child Welfare Act, United States Code, title 25, section 1913, a consent to adopt executed under this section, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable upon acceptance by the court except upon order permitting revocation issued by the same court after written findings that consent was obtained by fraud; or

(6) suspension of parental rights of one or both parents and the award of guardianship and legal and physical custody to a relative under the following conditions:

(i) the suspension of parental rights and an award of guardianship and legal and physical custody to the prospective guardian must occur at the same hearing;

(ii) any party may bring a petition or motion naming a fit and willing relative as a proposed guardian;

(iii) a suspension of parental rights has the legal effect of severing the parent-child relationship as if one or both of the parent's rights were terminated, unless and until the child reaches the age of 18, the child graduates from high school, or the parent's rights have been reinstated under section 260C.302, whichever event occurs earlier;

(iv) in awarding guardianship and legal and physical custody to a relative, the juvenile court must follow the standards established under this chapter and chapter 260, and the procedures established in the juvenile court rules for a transfer of permanent legal and physical custody to a relative;

(v) an order awarding guardianship and legal and physical custody to a relative under this subdivision must be filed in family court;

(vi) the court may only order suspension of parental rights and the award of guardianship and legal and physical custody to a relative under this subdivision if it finds:

(A) there is an identified prospective guardian who is a fit, suitable, and willing relative of one or more of the children;

(B) it is in the best interests of the child to suspend the rights of the parent or parents until the child reaches the age of 18, the child graduates from high school, or the parent's rights have been reinstated; and

(C) the guardian has consented and understands that, until the child reaches the age of 18, the guardian: is responsible for the protection, care, education, and control of the child, which includes the financial obligation to provide for the child; and is not relieved of guardianship unless and until the child reaches the age of 18, the child graduates from high school, or the parent's rights have been reinstated.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or

7.1 had significant contact. When the court has determined that permanent placement of the  
7.2 child away from the parent is necessary, the court shall consider permanent alternative  
7.3 homes that are available both inside and outside the state.

7.4 (f) Once a permanent placement determination has been made and permanent  
7.5 placement has been established, further court reviews are necessary if:

- 7.6 (1) the placement is long-term foster care or foster care for a specified period of time;  
7.7 (2) the court orders further hearings because it has retained jurisdiction of a transfer  
7.8 of permanent legal and physical custody matter;  
7.9 (3) an adoption has not yet been finalized; or  
7.10 (4) there is a disruption of the permanent or long-term placement.

7.11 (g) Court reviews of an order for long-term foster care, whether under this section  
7.12 or section 260C.317, subdivision 3, paragraph (d), must be conducted at least yearly and  
7.13 must review the child's out-of-home placement plan and the reasonable efforts of the  
7.14 agency to finalize the permanent plan for the child including the agency's efforts to:

7.15 (1) ensure that long-term foster care continues to be the most appropriate legal  
7.16 arrangement for meeting the child's need for permanency and stability or, if not, to identify  
7.17 and attempt to finalize another permanent placement option under this chapter that would  
7.18 better serve the child's needs and best interests;

7.19 (2) identify a specific long-term foster home for the child, if one has not already  
7.20 been identified;

7.21 (3) support continued placement of the child in the identified home, if one has been  
7.22 identified;

7.23 (4) ensure appropriate services are provided to address the physical health, mental  
7.24 health, and educational needs of the child during the period of long-term foster care and  
7.25 also ensure appropriate services or assistance to maintain relationships with appropriate  
7.26 family members and the child's community; and

7.27 (5) plan for the child's independence upon the child's leaving long-term foster care  
7.28 living as required under section 260C.212, subdivision 1.

7.29 (h) In the event it is necessary for a child that has been ordered into foster care for a  
7.30 specified period of time to be in foster care longer than one year after the permanency  
7.31 hearing held under this section, not later than 12 months after the time the child was  
7.32 ordered into foster care for a specified period of time, the matter must be returned to  
7.33 court for a review of the appropriateness of continuing the child in foster care and of the  
7.34 responsible social services agency's reasonable efforts to finalize a permanent plan for  
7.35 the child; if it is in the child's best interests to continue the order for foster care for a  
7.36 specified period of time past a total of 12 months, the court shall set objectives for the

child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(i) An order permanently placing a child out of the home of the parent or guardian must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

(j) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child. The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanency option under this chapter and that such an option is in the child's best interests. Upon a hearing where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child's best interests. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests. The county attorney must file pleadings and give notice as required under the rules of juvenile court in order to modify an order for long-term foster care under this paragraph.

(k) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

(l) This paragraph applies to proceedings required under this subdivision when the child is on a trial home visit:



(1) if the child is on a trial home visit 12 months after the child was placed in foster care or in the care of a noncustodial parent as calculated in this subdivision, the responsible social services agency may file a report with the court regarding the child's and parent's progress on the trial home visit and its reasonable efforts to finalize the child's safe and permanent return to the care of the parent in lieu of filing the pleadings required under paragraph (b). The court shall make findings regarding reasonableness of the responsible social services efforts to finalize the child's return home as the permanent order in the best interests of the child. The court may continue the trial home visit to a total time not to exceed six months as provided in subdivision 1. If the court finds the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent; and

(2) if a trial home visit ordered or continued at proceedings under this subdivision terminates, the court shall re-commence proceedings under this subdivision to determine the permanent status of the child not later than 30 days after the child is returned to foster care.

(m) An order for suspension of parental rights with an award of guardianship and legal and physical custody to a relative may only be modified if the rights of the parent or parents have been reinstated under section 260C.302, or there is a fit, suitable, and willing replacement guardian. A guardian named under this chapter acquires the same rights and responsibilities possessed by the child's birth parents. By operation of law, the guardian's rights and responsibilities are extinguished, and the rights of the parent or parents are reinstated, when the child reaches the age of 18 or graduates from high school, whichever event occurs first, unless an interested party files a petition to terminate parental rights.

**Sec. 3. [260C.302] REINSTATEMENT OF PARENTAL RIGHTS.**

(a) Upon petition of an interested party, the juvenile court having jurisdiction over the child may reinstate a parent's rights if:

(1) the rights were voluntarily terminated or suspended under section 260C.201; and

(2) the court finds:

(i) the child has not been adopted;

(ii) the child and parent whose rights were terminated have reestablished a parent-child relationship;

(iii) the child is either:

(A) ten years of age or older and has consented to the reinstatement; or

10.1            (B) under ten years of age and has expressed, in camera, a desire to have parental  
10.2 rights reinstated;

10.3            (iv) the circumstances that resulted in the suspension or termination of parental  
10.4 rights have been rectified; and

10.5            (v) reinstatement of parental rights is in the best interests of the child.

10.6            (b) A parent may not petition for reinstatement of parental rights earlier than five  
10.7 years after the date of the suspension or termination order. No subsequent motion may be  
10.8 filed earlier than five years following disposition on the merits of the original petition for  
10.9 reinstatement of parental rights, unless the motion is filed by a child 16 years of age or  
10.10 older, or by the local social services agency.

10.11           (c) The hearing procedures, legal standard, burden of proof, and rules that apply to  
10.12 the modification of a long-term foster care order apply to the issuance of a ruling on a  
10.13 petition for reinstatement of parental rights.

10.14           (d) A motion to award permanent legal and physical custody or guardianship may,  
10.15 but is not required to, accompany the petition for reinstatement.

10.16           Sec. 4. Minnesota Statutes 2008, section 260C.328, is amended to read:

10.17           **260C.328 CHANGE OF GUARDIAN; TERMINATION OF GUARDIANSHIP.**

10.18           (a) Upon its own motion or upon petition of an interested party, the juvenile court  
10.19 having jurisdiction of the child may, after notice to the parties and a hearing, remove  
10.20 the guardian appointed by the juvenile court and appoint a new guardian in accordance  
10.21 with the provisions of section 260C.325, subdivision 1, clause (a), (b), or (c). Upon a  
10.22 showing that the child is emancipated, the court may discharge the guardianship. Any  
10.23 child 14 years of age or older who is not adopted but who is placed in a satisfactory foster  
10.24 home, may, with the consent of the foster parents, join with the guardian appointed by the  
10.25 juvenile court in a petition to the court having jurisdiction of the child to discharge the  
10.26 existing guardian and appoint the foster parents as guardians of the child. The authority  
10.27 of a guardian appointed by the juvenile court terminates when the individual under  
10.28 guardianship is no longer a minor or when guardianship is otherwise discharged.

10.29           (b) The court may not discharge a guardian named when parental rights have been  
10.30 suspended under section 260C.201 unless there is a fit, suitable, and willing replacement  
10.31 guardian, or the rights of the parent or parents have been reinstated.